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No. 209

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

EARL J. LOMBARD AND GUARDIAN INVESTMENT CORPORATION, *Petitioners*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Counsel, on behalf of Earl J. Lombard and Guardian Investment Corporation, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above cases on March 16, 1965. (The cases were consolidated on appeal, by Order of the Court of Appeals of September 4, 1964, because of the identity of the factual and legal issues. A single petition is filed in accordance with rule 23(5) of the rules

of this Court). Appellants' motion in the Court of Appeals for a rehearing en banc was denied May 5, 1965.

OPINIONS BELOW

The United States District Court for the District of Columbia rendered no opinion. The United States Court of Appeals for the District of Columbia Circuit rendered no opinion.

JURISDICTION

A per curiam Order affirming the decision below was entered on March 16, 1965 and a per curiam Order denying a petition for rehearing en banc was entered May 5, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Did the Trial Court err in instructing the jury on criminal intent and in responding to the jury's request for copies of the penal statutes involved by sending typed excerpts to the jury without an adjuration as to criminal intent?

STATUTES INVOLVED

Title 15 USC 77q(a)—Fraudulent interstate transactions.

(a) It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly

(1) to employ any device, scheme, or artifice to defraud,

(2) (not pertinent and omitted).

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

22 D. C. Code—1202. Embezzlement by Agent, attorney, clerk, servant, or agent of a corporation.

If any agent, attorney, clerk, or servant of a private person or copartnership, or any officer, attorney, agent, clerk or servant of any association or incorporated company, shall wrongfully convert to his own use, or fraudulently take, make way with, or secrete, with intent to convert to his own use, anything of value which shall come into his possession or under his care by virtue of his employment or office, whether the thing so converted be the property of his master or employer or that of any other person, copartnership, association, or corporation, he shall be deemed guilty of embezzlement, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than ten years, or both. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 834.)

22 D. C. Code—2201. Grand larceny.

Whoever shall feloniously take and carry away anything of value of the amount or value of $100 or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 826; Aug. 12, 1937, 50 Stat. 628, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215(a)).

22 D. C. Code—2203. Larceny after trust.

If any person entrusted with the possession of anything of value, including things savoring of the realty,